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December 7, 2017

**Via CM-ECF**

Honorable Valerie E. Caproni  
United States District Judge  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

Re:     *United States v. Joseph Percoco, et al.*, No. 16-CR-776 (VEC) (S.D.N.Y.)

Dear Judge Caproni:

We are counsel for Defendant Louis Ciminelli. We write on behalf of Mr. Ciminelli, Defendant Michael Laipple, and Defendant Kevin Schuler.

On August 8, 2017, we advised the Court of Hon. Loretta A. Preska's decision in *United States v. Davis*, No. 13 Cr. 923, 2017 WL 3328240 (S.D.N.Y. Aug. 3, 2017). (Dkt. 309.) The government's response noted, among other things, that it might appeal Judge Preska's decision. (Dkt. 313 at 1 n.1.) And the government did in fact file a notice of appeal on October 4—presumably to give the Solicitor General's Office more time to decide whether it would authorize a challenge to Judge Preska's scholarly opinion, *see U.S. Attorneys' Manual § 2-2.121 ("All appeals to the lower appellate courts . . . must be authorized by the Solicitor General.")*. We write to inform the Court that the government recently withdrew its appeal. *See United States v. Davis*, No. 17-3190 (2d Cir. Dec. 5, 2017), Dkt. 24. An order dismissing the appeal was entered today. *See id.*, Dkt. 30.

Accordingly, Judge Preska's opinion stands as the last word on the wire fraud charged in *Davis*, and is a compelling illustration of the principles cabining the right-to-control theory. For the reasons stated in prior submissions, those principles foreclose the wire fraud charged here.

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Respectfully yours,

/s/ Daniel C. Oliverio

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DCO/

cc: All counsel of record (*via CM-ECF*)